



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 13, 2003

Ms. Denise G. Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2003-1054

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176651.

The City of Richardson Police Department (the "department") received a request for a copy of a complaint filed on the requestor's behalf and the letter of reprimand that the requestor was informed resulted from the complaint. You state that you do not have information responsive to the request for the letter of reprimand as the complaint resulted in a verbal reprimand. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that the complaint itself is excepted from disclosure based on sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ refused n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. Employee privacy under section 552.102 is significantly narrower than common-law privacy under section 552.101, however, because of the greater public interest in the disclosure of information relating to public employees. See Open Records Decision Nos. 470 (1987), 444 (1986), 423 (1984). This office has stated in numerous formal decisions that there is a legitimate public interest in how a public employee conducts himself while on-duty and how he performs his job functions. See Open Records Decision Nos. 484 (1987) (public's interest in knowing how police departments resolve complaints against police officers ordinarily outweighs officers' privacy interest), 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow), 329 (1982) (reasons for an employee's resignation are not ordinarily excepted by constitutional or common-law privacy). Thus, we conclude that the submitted information does not contain information that may be withheld under section 552.102.

You also claim that the responsive information is excepted from disclosure by section 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate that the requested information relates to law enforcement only in relation to an investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate that the submitted information is excepted from disclosure under section 552.108(b)(2) because the investigation did not result in official disciplinary action. After careful review, it does not appear to this office that the responsive information relates to a criminal investigation by the department. We therefore conclude that the department has not demonstrated that the information submitted is excepted from disclosure under section 552.108. Section 552.108 is inapplicable to a police department's administrative investigations that do not involve an investigation of crime. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). Because the submitted information does not relate to a criminal investigation, we find that the submitted information is not excepted from disclosure under section 552.108. The department must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

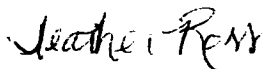
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 176651

Enc: Submitted documents

c: Mr. Sean Street
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Irving, Texas 75063
(w/o enclosures)